

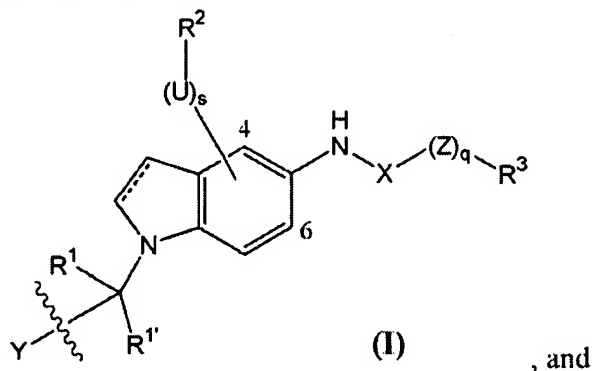
REMARKS

Claims 1-37 are pending in the present application. Claims 24-37 have been withdrawn from consideration. Claims 1-23 have been amended to correct minor editorial errors and to provide for more customary claim language, thereby, more clearly defining the invention the Applicants deem as theirs. No new matter has been added. Accordingly, Claims 1-23 are presently pending for examination.

In response to the Notice, the accompanying listing of claims includes the text of all pending claims, including withdrawn claims. Applicants, therefore, respectfully request the entry of the present amendment.

With the Office Action mailed on August 20, 2007, Claims 1-37 were subject to restriction. The United States Patent & Trademark Office ("the Office") alleged the present invention comprises two groups of inventions that are independent and distinct inventions - namely:

Group I comprising Claims 1-23 that are drawn to compounds of formula (I):

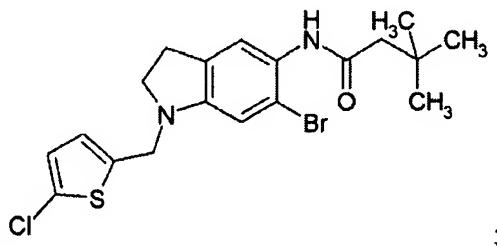


a pharmaceutical composition comprising an effective amount of a compound of Claim 1 or its salt, classified in various subclasses of classes 514 and 548; and

Group II comprising Claims 24-37 that are drawn to a method of increasing ion flow in a potassium channel, comprising administering to a mammalian patient in need of a pharmaceutically effective amount of a compound of Claim 1 or composition thereof, classified in various subclasses of class 514.

See pages 2-3 of the Office Action. The Office further required election of a single compound. See page 3 of the Office Action.

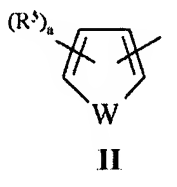
In response to the restriction requirement, Applicants elect Group I, claims 1-23, with traverse, and further elect N-[6-Bromo-1-(5-chlorothiophen-2-ylmethyl)-2,3-dihydro-1H-indol-5-yl]-3,3-dimethylbutyramide, which is Example 6b in the specification on page 94, and can be structurally depicted as:



wherein the corresponding substituent groups of formula I are:

the optional bond represented by the dotted line is absent;

Y is a group of formula II, specifically:



wherein:

R^5 is halogen, specifically, Cl;

a is 1; and

W is S;

R^1 and $R^{1'}$ are each H;

U is absent because s is 0;

R^2 is halogen, specifically, Br;

X is CO;

Z is absent because q is 0; and

R³ is C₁₋₆-alk(en/yn)yl – namely, C₁₋₆-alkyl and specifically, dimethylbutane.

In doing so, Applicants reserve the right to pursue the subject matter of the non-elected claims in one or more divisional or continuing application(s). Applicants respectfully traverse the restriction requirement.

As will be appreciated, even if the Office considers the groups of claims to be patentably distinct, MPEP § 803 mandates *two* criteria for a proper requirement for restriction: 1) the inventions must be independent or distinct; and 2) *there would be a serious burden on the examiner if restriction is not required*. For purposes of initial restriction, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation either separate classification, separate status in the art, or a different field of search as defined in MPEP §808.02. Significantly, however, this *prima facie* burden has not been met.

Indeed, the Office has not shown separate status in the art, such as, by citing patents that evidence such separate status and also of a separate field of search, nor has the Office shown a requirement for a different field of search. Indeed, each of the alleged Groups of inventions is in a same class, class 514, and arguably of the same subclass(es) thereof since the Office has not identified which “various subclasses” in which the Groups would be classified. In fact, the Office merely makes conclusory allegations that the Groups of inventions are recognized in the art as being distinct. See e.g., pages 5-6 of the Office Action. But, without more, the Office has not established by appropriate explanation separate classification or separate status in the art has been recognized when classified together.

Further, the Office has not shown that it is necessary to search different fields for one Group of inventions than the other, i.e., to search in a manner that is not likely to result in finding art pertinent to the other invention. Indeed, the methods of Group II use a compound or composition of Group I and the methods of Group II include uses and disorders and conditions that can be defined and described by well known terms. See e.g., Claims 24-37. Thus, it is not clear how searching these groups in the same class and subclass would place a serious burden on the examiner.

For the foregoing reasons, Applicants believe the Groups of inventions should be rejoined and the restriction requirement be withdrawn.

The Commissioner is hereby authorized to charge any fee or underpayment thereof, or credit any overpayment, to deposit account no. 503201.

Early reconsideration and allowance of all pending claims is respectfully requested. The Office is requested to contact the undersigned if an interview, telephonic or personal, would facilitate allowance of the claims.

Respectfully submitted,

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